

MINUTES
BOARD OF ADJUSTMENT
September 4, 2008

THOSE IN ATTENDANCE:

Gary Soule, Chairman	Jason Jaggi, Planner
Mel Disney	Jeff Duke, Acting City Attorney
Rick Bliss	
Victor Cohen	
Anne Bishop	

Chairman Soule called the meeting to order at 5:30 p.m. He welcomed everyone to the meeting and introduced the newest member of the Board, Anne Bishop. He then introduced himself and asked that the other members of the Board introduce themselves.

MINUTES

The minutes of the meeting of May 1, 2008 were presented for approval. The minutes were approved, after having been previously distributed to each member.

Chairman Soule stated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of five members and that four members must vote in favor of a variance in order for a variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place.

Chairman Soule indicated that the first order of business this evening is the election of the Chairman and Vic-chairman.

Rick Bliss nominated Gary Soule to continue his service as Chairman. The nomination was seconded by Victor Cohen and received unanimous approval of the Board.

Rick Bliss nominated Mel Disney to continue his service as Vice-chairman. The nomination was seconded by Victor Cohen and received unanimous approval of the Board.

Chairman Soule indicated that there is one item to be considered this evening, 807 S. Bemiston, and confirmed the attendance of the applicant.

APPEAL FROM CRAIG & ERIN OLSCHANSKY FOR THE PROPERTY AT 807 SOUTH BEMISTON AVENUE

Mr. Olschansky, owner, was in attendance at the meeting.

Everyone wishing to speak this evening regarding this appeal was sworn in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide an overview of the appeal.

Jason Jaggi began a PowerPoint presentation. A slide depicting the property's zoning designation and that of surrounding properties was presented. He indicated that the owners are requesting a variance for a rooftop deck (above the garage) and stairs. He stated the home was constructed in 1930 per St. Louis County records and that the lot is 78' X 120' (9,360 square feet). He indicated that the subject property is zoned R-2 Single Family Dwelling District as are the surrounding properties. Jason informed the members that the garage is centered in the rear of the property and is partially attached to the house. A slide depicting an aerial view of the site was presented which shows the primary structure and the garage. Photos depicting various views of the subject property were also presented.

Chairman Soule indicated that he visited the property this afternoon to get a better idea of the property and variances being requested.

Jason Jaggi informed the members that the required rear yard setback is 30'.

Chairman Soule asked how the 8 foot variance request for the stairs relates to the 6.25 foot variance request for the rooftop deck.

Jason Jaggi indicated that there are two components to this request; the variance for the deck itself and the variance for the deck stairs. Jason reiterated that the rear yard setback requirement for the deck is 30' with a 4' encroachment allowance for the stairs thereby the 8' variance request for the stairs.

Chairman Soule asked if there were any other questions for Jason.

None were received.

Chairman Soule asked if the City would like to present its exhibits.

Acting City Attorney Duke presented the following exhibits with regard to the application. He asked that they be entered into the record on behalf of the City:

- A. City's Code of Ordinances and City's Master Plan;
- B. Application for Zoning Review submitted by the applicant;
- C. Zoning Review denial letter;
- D. Application for Appeal and supplemental correspondence;
- E. Drawings
- F. Staff Report.

Chairman Soule indicated that barring any objections, all Exhibits will be received.

Mr. Olschansky stated that he had no objections to the Exhibits as presented and asked if he could introduce his own exhibits.

Chairman Soule replied "yes".

There were no objections and the City's Exhibits were entered into record.

Mr. Olschansky introduced himself as the owner of this property and indicated that he has 4 children. He congratulated Gary Soule and Mel Disney on their continuing tenure as Chair and Vice-chair. He stated that his request is for a rooftop deck atop his flat roof garage and exterior stairs providing access to the deck. He stated that the deck does not extend beyond the west wall of the garage with the stairs on the west side. He indicated that there are several garages, sheds and other improvements in the area that are within 5 feet of the property line and that next door to him there is a large garage that sits close to the property line as well as a large shed that is located a couple of properties down from him that are both highly visible. He stated that he could expand the rear of his house and add a second level atop the garage without the need for a variance. He stated that they also could tear down the existing garage and construct one 5 feet from the property lines without the need for a variance. He stated that this deck is significantly farther away from the property lines. He informed the members that his neighbors at 801 and 815 (north and south of his property) indicated to him that they have no objections with the proposal and that his Aldermen came to his house and also have no objections to the proposal. He stated that the subdivision trustees signed off on the original building permit plans. He stated that the rear neighbors at 722 and 800 Central were polled and they support the proposal. He indicated that he has no opposition that he is aware of from anyone who would be affected by the proposal. He stated that he believes he has two grounds for consent; hardship, for which he believes he has in the fact that the garage is in the middle of the rear yard so there is no place else to put this deck and practical difficulty. He indicated that he discussed with staff relocating the stairs to the south and moving the deck to meet the 30 foot setback requirement, but if the stairs were moved to the south they would be located right on top of a sewer lateral which 14 feet of that lateral was just dug up. He stated that the garage has been there since 1930 and that the deck needs to be where it is. He stated that a practical hardship exists in that these two elements (deck and stairs) must work and that if the deck is moved to meet the 30 foot setback requirement, something needs to be done to access the deck and there is no other option so as not to walk on tar. He stated that there was some discussion regarding placing the deck where the patio is but the problem is the deck has to be at the entryway and they have a screen porch at the patio level. He stated that denying this request is an unreasonable prohibition of the use of the property. He

stated that the deck cannot be located on the north side of the garage due to the existing driveway, garage door openings, and drainage system, all of which are original to the house. He indicated that technically, the garage is attached to the house by a brick wall, but as a practical matter, the garage is detached and that he believes his garage meets the definition of an accessory structure under City Ordinance, Chapter 22, Article 3. He stated that if the garage is treated as an accessory structure, the deck and stairs are not in violation of the setback requirements. He then referred to Chapter 22, Article 4, Section 4.2 (Nonconforming Structures) indicating that nothing they are doing is increasing or extending beyond what already exists. He indicated that perhaps, there are different interpretations and asked the Board to determine that his analysis is the correct one. He indicated that in December, 2007, the City adopted the 2006 IRC (International Residential Code) which has a similar definition of accessory structure as that in the Zoning Ordinance. Mr. Olschansky then referred to several sections of the IRC as well as codes adopted in other cities including Cortez, Colorado, Okono, Wisconsin and Lewiston, Maine. He indicated that other jurisdictions have figured out how to differentiate between attached and detached. Mr. Olschansky then quoted information from the local amendments to the building code regarding work exempt from permit for detached accessory structures that are less than 50 square feet. He stated that he is asking that either the variances be granted so that the work can proceed or that the Board determine that there is no need for a variance. He then indicated that the plan before the Board at this time shows the deck 10 feet away from the house, but that he would like the deck to be 4'-3" closer to the house.

Rick Bliss asked if it is the purview of this Board to decide if this work is permitted under the zoning ordinance and if so, then the matter should be addressed.

Chairman Soule asked Mr. Duke to respond.

Acting City Attorney Jeffrey Duke referred to Chapter 22, Article 8, Section 8.4 (Error by Municipal Officer) indicating that "yes", it is within this Board's purview, but believes it is pertinent to look at how the City has previously applied the Ordinance. He then referred to the definition (and sketch) of Accessory Building or Use as contained in Article 3 (Definitions), indicating that it is not safe to assume that it may be part of the principle structure.

Jason Jaggi asked that the Board look at the intent of the Ordinance and that cases like this are constantly brought before this Board for setback variance.

Mel Disney asked Mr. Olschansky if he is asking this Board for alternate consideration and if he is amending the petition for a variance.

Mr. Olschansky indicated that he is not amending anything and that his application defines an error made by the City Official and that he believes the application speaks for itself. He stated he will leave the decision up to this Board as to whether to grant the variances or to reverse the interpretation of the City Official.

Chairman Soule asked to address other area structures that are not in compliance.

Mr. Olschansky indicated other structures can be built closer to the property line and that he assumes they meet the criteria for an accessory structure.

Chairman Soule stated he realizes that and that his question to Jason is were those structures constructed pre-ordinance.

Jason Jaggi indicated that some are original and some are newer. He reminded the members that there are different regulations for different structures and that detached structures must be at least 5 feet from the property lines and 10 feet away from the principle structure. He explained that if, for example, there is a covered walkway between the garage and principle structure, the garage then becomes “attached” and that the City has held to that. He added that staff is very clear on how these types of issues have been addressed previously.

Chairman Soule asked Jason to address Mr. Olschansky’s earlier comment that he could build a second story onto the garage without the need for a variance.

Jason Jaggi replied “yes”; if it did not encroach beyond the 30 foot setback requirement. He added that decks are permitted beyond the setback, but they must be at or below the first floor level, which this deck is not.

Chairman Soule asked if the garage, could be demolished and put within 5 feet of the property lines and also contain a rooftop deck.

Jason Jaggi replied “yes”; he added that that option was discussed with the owner.

Chairman Soule asked if the issue here is whether the garage is attached or detached.

Jason Jaggi indicated that many questions have been raised here and that the subject garage is attached so they cannot apply the standards for a detached structure.

Chairman Soule asked staff’s consideration of the lot configuration.

Jason Jaggi indicated that he did not find anything unusual with the lot or the garage.

Chairman Soule asked if staff believes the garage to be an accessory structure.

Jason Jaggi replied “no”; he stated that it is an accessory “use”, but that the garage is indeed attached to the house.

Mel Disney indicated that the application refers to a dormer being installed on the rear of the home. He asked if the dormer would be in the area of the deck.

Mr. Olschansky stated that the dormer is on the 3rd floor.

Mel Disney asked if the deck would comply with the setback regulations if it were moved back as suggested by staff.

Mr. Olschansky replied that he assumes the stairs would remain as proposed.

Mel Disney asked if the deck would comply with the regulations if it remained the size as proposed but was moved closer to the house.

Mr. Olschansky stated that he would have to shave off some of the west portion of the deck and more on the east.

Mel Disney commented about the sewer line in the back yard, stating that he has a good idea of where the sewer line is located. He stated that with another type of stairs and/or the knowledge of the location of the sewer, these issues could be succumbed.

Mr. Olschansky invited the members to visit his property to see the destruction from having to dig up the sewer line. He stated that the sewer contractor required a large bulldozer to do the job and that the plumbing contractor insisted that three men perform the work. He stated that if the sewer line had to be dug up again, it would require complete removal of the deck stairs.

Mel Disney indicated that he understands the problem but that, for example, a spiral staircase would only require one footing at 30" deep. He indicated that he has a concern with the request.

Chairman Soule asked how the size of the subject property compares to that of surrounding properties.

Jason Jaggi indicated that this property is a little wider, but is basically the same size as the surrounding properties.

Chairman Soule asked if staff believes there are at least two alternatives that could be utilized that would not require a variance.

Jason Jaggi replied "yes". He stated that one would be to pull the deck back to meet the 30 foot rear yard setback requirement and put the stairs on the south side and the other would be an expansion of the patio in lieu of a deck.

Chairman Soule asked Mr. Olschansky if his objection is making the deck smaller or the location of the stairs or both. He stated he believes the deck could be 20 X 13 and meet the setback requirement.

Mr. Olschansky stated his objection is the location of the stairs.

Chairman Soule asked about expanding the existing patio.

Mr. Olschansky stated that the patio is not at the right grade.

Chairman Soule commented that we (this Board) like to assist applicants in finding acceptable resolutions and at the same time, operate within the boundaries of this Board. He stated that this approach has been taken to try to encourage people to live and stay in Clayton.

Mr. Olschansky indicated that the alternatives are not something he wants to do. He stated that building a deck or expanding the patio takes up too much yard and too much greenspace. He stated that Clayton likes to retain greenspace and that there would be water run-off issues if the patio is expanded, so he does not see that as a viable solution.

Rick Bliss asked if the stairs, as proposed, start up high on the south, run down toward the north then turn west.

Jason Jaggi replied “yes”.

Rick Bliss asked Mr. Olschansky if he considered steps that only run south to north.

Mr. Olschansky replied “no”. He stated that he does not want to encumber the driveway area and does not know if that suggestion would work.

Rick Bliss commented that this Board is not here to design projects.

Being no further questions or comments, Chairman Soule made a motion to grant a variance from Section 15.8.2 of the Zoning Code for relief from the rear yard setback to allow the rooftop deck to encroach 6.25 feet into the 30 foot rear yard setback. The motion was seconded by Victor Cohen and received the following roll call vote: Ayes: Rick Bliss, Victor Cohen & Anne Bishop. Nays: Chairman Soule and Mel Disney. Motion fails.

Chairman Soule made a motion to grant a variance from Section 15.8.2 (d) of the Zoning Code for relief from the rear yard setback to allow deck stairs to encroach 8 feet into the 34 foot rear setback. The motion was seconded by Rick Bliss and received the following roll call vote: Ayes: Rick Bliss, Victor Cohen & Anne Bishop. Nays: Chairman Soule and Mel Disney. Motion fails.

Rick Bliss asked about a copy of a letter the Board he received as a member of the Board of Adjustment regarding the Centene Project and its impact on this Board.

Jason Jaggi informed the members that several City Officials and Boards/Commissions received a copy of the letter and that for the Board of Adjustment, it is for informational purposes only.

The Secretary informed the members that an application is forthcoming, so there will be the need for a meeting in October.

Being no further business for the Board of Adjustment, this meeting adjourned at 7:00 p.m.

Recording Secretary